

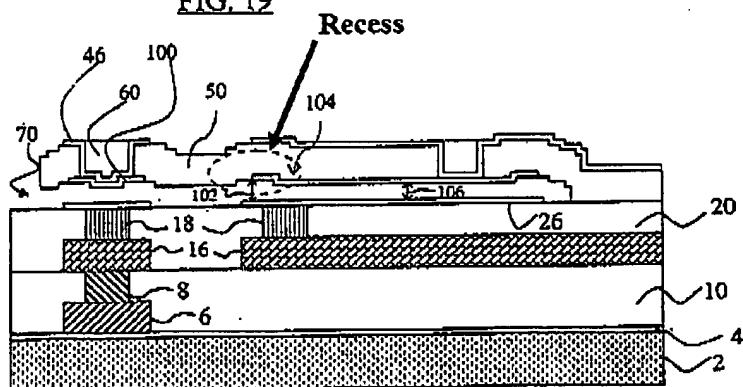
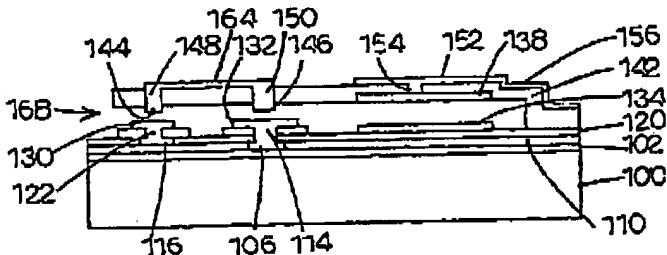
REMARKS

To avoid the necessity of an Appeal, applicants respectfully request reconsideration and allowance of the present application in view of the following remarks. Claims 1-5 are pending in the application, of which claims 1, 3 and 5 are independent claims.

*Claim Rejections Under 35 U.S.C. § 102*

In the Office Action, claims 1-5 stand rejected under 35 U.S.C. 102(e) as allegedly being anticipated by U.S. Patent No. 6,746,891 to Cunningham et al. (Cunningham). For reasons set forth below, Applicants respectfully traverse this rejection.

In rejecting each of claims 1-5, the Office Action primarily relies on Figure 1v of Cunningham. Meanwhile, an example embodiment of the claimed invention is depicted in FIG. 19 of the present application. For convenience, the two Figures are reproduced below.

FIG. 19Cunningham Fig. 1vFIG. 1V

Meanwhile, independent claim 1 requires (with corresponding elements in FIG. 19 identified, along with allegations regarding Cunningham's elements, which are in dispute):

- (a) a substrate including a stationary electrode attached thereto [FIG. 19 -- 26; Cunningham -- 134];
- (b) a resilient structural layer [FIG. 19 -- 50; Cunningham -- 168] including a first end fixed with respect to the substrate, a second end suspended over the substrate, and a surface having a recess [FIG. 19 -- circled; Cunningham -- none] formed therein; and
- (c) a movable electrode [FIG. 19 -- 104; Cunningham -- 138] attached within the recess whereby the movable electrode is separated from the stationary electrode by a gap.

Cunningham Does Not Disclose A Movable Electrode Attached Within A Recess Formed In A Surface Of A Resilient Layer As Required By Independent Claims 1, 3 and 5

As can be clearly seen from the drawings above, Cunningham does not have a recess as claimed, much less a movable electrode attached within the recess.

The Office Action does not identify where Cunningham's recess is located. However, it is assumed that the Office Action takes the position that the gap or entire space between Cunningham's stationary electrode 134 and the resilient beam 168 is the claimed recess. This position would be wrong.

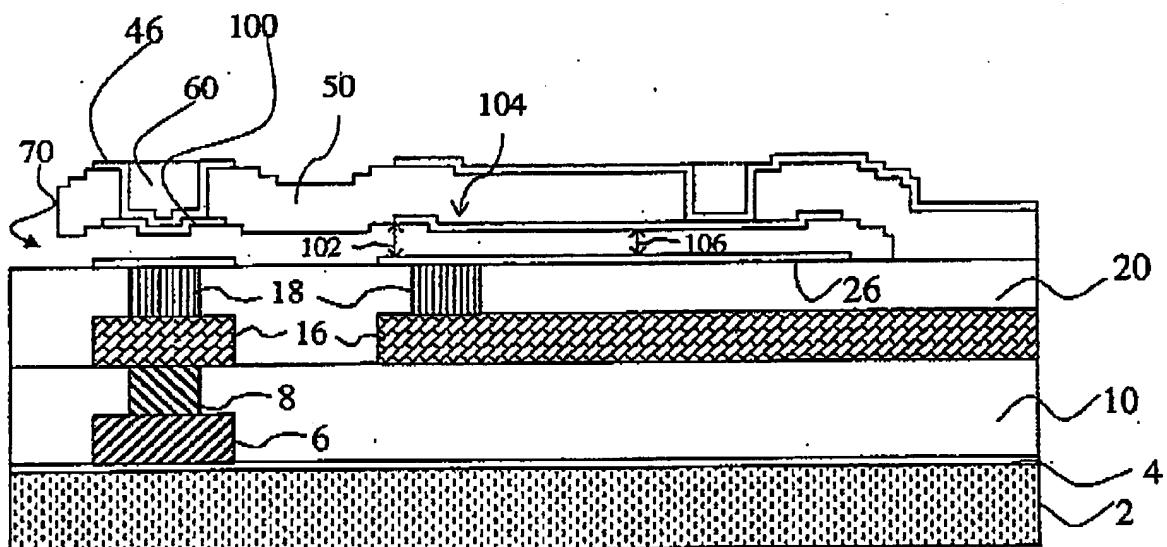
The claims clearly state that the recess is formed in a surface of the resilient layer. The gap between Cunningham's beam 168 and stationary electrode 134 could not possibly be considered a recess formed in a surface of the beam. Moreover, the claims further require a gap that separates the movable electrode and the stationary electrode. It would be inconsistent for the Office Action to take the position that two distinct claim elements (recess formed in a surface of the beam and a gap between the movable electrode and stationary electrode) are met by a single element in the prior art reference, even if it would be possible. The space between the beam and the stationary electrode can either correspond to the claimed gap or the claimed recess, it cannot reasonably correspond to both.

Moreover, Cunningham is replete with references to various "recesses," but none of these recesses could correspond to the claimed recess, and one skilled in the art reading Cunningham would not consider a mere gap or space between two layers or structures to be a recess formed in a surface. For example, Cunningham describes the formation of recesses 158, 160, 162 in the surface of layer 142 during processing (see Fig. 1S, col. 14, lines 31-51). One skilled in the art reading Cunningham would understand that Cunningham defines recesses formed in a surface to be entirely different structures than mere gaps between layers. Accordingly, Cunningham would not disclose or suggest to those skilled in the art a movable electrode attached in a recess formed in a surface as defined by the claims or by Cunningham's own explicit definitions of those terms.

For at least these reasons, independent claims 1, 3 and 5 patentably define over the prior art and the 102 rejections thereof, along with claims 2 and 4 that depend from claims 1 and 3, should be withdrawn.

Dependent Claims 2 and 4 Further Patentably Define Over Cunningham

As amended, claims 2 and 4 depend from claims 1 and 3, respectively and are patentable for at least the foregoing reasons. Claims 2 and 4 further require that the movable electrode is attached within the recess of the resilient structural layer whereby a first portion of the movable electrode is separated from the substrate by a distance less than the distance separating a second portion of the movable electrode from the substrate.



As seen in Figure 19 of the present application reproduced above, movable electrode 104 has at least two portions, distinguishable by the size of air gap 102 and 106 separating the portions from stationary electrode 26 (see also, Specification at page 9, lines 10-21).

Cunningham provides no such teaching and cannot be said to anticipate the structure of the claimed recessed movable electrode or the advantages derived therefrom (see present application at page 10, lines 12-17). Cunningham merely provides a movable electrode 138 that is separated by a uniform gap from a stationary electrode 134 at rest (Figure 1v). Nowhere does Cunningham disclose or suggest that different portions of electrode 138 can be separated by different gaps from the stationary electrode 134.

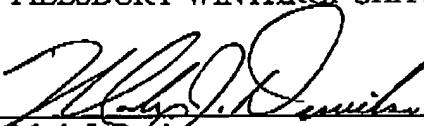
Therefore, for at these additional reasons, Applicants respectfully request withdrawal of the rejections of dependent claims 2 and 4 because Cunningham does not anticipate or suggest each and every element of these claims.

***Conclusion***

All objections and rejections having been addressed, it is respectfully submitted that the present application is in a condition of allowance and a Notice to that effect is earnestly solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,  
PILLSBURY WINTHROP SHAW PITTMAN LLP

Date: September 22, 2005

  
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